

EXHIBIT 7

1
2 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3 -----x
KATHRYN TOWNSEND GRIFFIN,
4 HELEN MCDONALD, and THE ESTATE
OF CHERRIGALE TOWNSEND,

5
-against-

6 Civil Action No.:
1:17-CV-05221-RJS/GRIFFIN

7
8 EDWARD CHRISTOPHER SHEERAN,
p/k/a ED SHEERAN, ATLANTIC
9 RECORDING CORPORATION, d/b/a
ATLANTIC RECORDS, SONY/ATV
10 MUSIC PUBLISHING LLC and
WARNER MUSIC GROUP
11 CORPORATION, d/b/a ASYLUM
RECORDS,

12 Defendants.

13 -----x

14 May 30, 2018
15 10:02 a.m.

16
17 Videotaped Deposition of ALEXANDER STEWART,
18 taken by Defendants, pursuant to Notice, held at the
19 law offices of Pryor Cashman, LLP, 7 Times Square,
20 New York, New York, before Judith Castore, a
21 Certified Livenote Reporter and Notary Public of the
22 State of New York.

<p style="text-align: right;">Page 82</p> <p>1 STEWART</p> <p>2 correct?</p> <p>3 A It informed my work to some</p> <p>4 extent. But, no, I didn't include it</p> <p>5 explicitly in the analysis.</p> <p>6 Q So your testimony is that you</p> <p>7 did review the deposit copy before you</p> <p>8 rendered your June 2015 report?</p> <p>9 A No. I don't recall the</p> <p>10 timing.</p> <p>11 Q So you don't know whether it</p> <p>12 informed that?</p> <p>13 A Yeah, that's a good call. I</p> <p>14 don't recall if it informed that or</p> <p>15 not.</p> <p>16 Q And do you recall whether you</p> <p>17 reviewed the deposit copy before you</p> <p>18 rendered your December 2017 report?</p> <p>19 A Yes, I did.</p> <p>20 Q And your testimony is that it</p> <p>21 informed your opinion in your</p> <p>22 December 2017 report?</p> <p>23 A I found that it supported</p> <p>24 everything in my report.</p> <p>25 Q But in your December 2017</p>	<p style="text-align: right;">Page 84</p> <p>1 STEWART</p> <p>2 A It is accurate. I'm not sure</p> <p>3 it's exhaustive.</p> <p>4 Q Well, what's missing?</p> <p>5 A Well, it's missing the</p> <p>6 deposit copy and it's missing the lead</p> <p>7 sheets, the published sheet music which</p> <p>8 I referenced repeatedly in my report,</p> <p>9 but I apparently didn't include it in</p> <p>10 this paragraph.</p> <p>11 Q We would also ask that any</p> <p>12 sheet music that you reviewed in</p> <p>13 connection with your report should be</p> <p>14 produced to us, as well.</p> <p>15 A I believe it was attached to</p> <p>16 this report, the sheet music.</p> <p>17 Q I don't believe it was.</p> <p>18 Certainly not both.</p> <p>19 A Certainly Thinking Out Loud</p> <p>20 was. And this seems to be missing the</p> <p>21 table of contents where I list my</p> <p>22 attachments. Do you have that, too?</p> <p>23 Q This is what was provided to</p> <p>24 us.</p> <p>25 A But you know there were</p>
<p style="text-align: right;">Page 83</p> <p>1 STEWART</p> <p>2 report you don't identify the deposit</p> <p>3 copy as materials that you reviewed in</p> <p>4 analyzing the two songs at issue,</p> <p>5 correct?</p> <p>6 A I don't know. Can I see my</p> <p>7 report?</p> <p>8 Q Sure.</p> <p>9 (Dr. Alexander Stewart's</p> <p>10 report dated 12/8/17, was marked</p> <p>11 Stewart Exhibit 2, for</p> <p>12 identification, as of this date.)</p> <p>13 Q So I'm showing you what's</p> <p>14 been marked Stewart Exhibit 2, which is</p> <p>15 your report dated December 8, 2017.</p> <p>16 And I'll direct your attention to the</p> <p>17 first page.</p> <p>18 Is this an accurate copy of</p> <p>19 your December 8, 2017 report in this</p> <p>20 case?</p> <p>21 A It appears to be.</p> <p>22 Q And does the second paragraph</p> <p>23 on Page 1 accurately list the materials</p> <p>24 that you reviewed in connection with</p> <p>25 issuing this report?</p>	<p style="text-align: right;">Page 85</p> <p>1 STEWART</p> <p>2 attachments with this.</p> <p>3 Q I wasn't given any</p> <p>4 attachments. So we're going to --</p> <p>5 we'll confirm that. Obviously to the</p> <p>6 extent we were given them, we will</p> <p>7 correct ourselves, but -- and to the</p> <p>8 extent that we weren't given them, we</p> <p>9 obviously need to get them and reserve</p> <p>10 the rights on this deposition pending</p> <p>11 all of that.</p> <p>12 So your testimony is that you</p> <p>13 did have a copy of the deposit copy of</p> <p>14 Let's Get It On prior to rendering your</p> <p>15 December 2017 report?</p> <p>16 A I believe so.</p> <p>17 Q And you didn't believe that</p> <p>18 it was necessary to refer to it or</p> <p>19 reference it in any way in this report?</p> <p>20 A I found that it supported all</p> <p>21 my work and it's not referenced in my</p> <p>22 report.</p> <p>23 Q Do you know whether the</p> <p>24 deposit copy of Let's Get It On was</p> <p>25 created after the sound recording of</p>

<p style="text-align: right;">Page 86</p> <p>1 STEWART</p> <p>2 Let's Get It On that you reviewed was</p> <p>3 created?</p> <p>4 A It's my understanding that it</p> <p>5 was.</p> <p>6 Q And what is that</p> <p>7 understanding based on?</p> <p>8 A Based on the fact that it was</p> <p>9 transcribed by an associate of</p> <p>10 Mr. Townsend and --</p> <p>11 Q Anything else?</p> <p>12 A Well, that was standard</p> <p>13 practice in the industry, it's standard</p> <p>14 practice now.</p> <p>15 Q Anything else?</p> <p>16 A That's all that comes to</p> <p>17 mind.</p> <p>18 Q So you don't know for a fact</p> <p>19 whether or not the deposit copy was</p> <p>20 created before or after the song was</p> <p>21 recorded, correct?</p> <p>22 A Oh, I believe it was created</p> <p>23 after.</p> <p>24 Q But you're basing that on</p> <p>25 your assumptions based on standard</p>	<p style="text-align: right;">Page 88</p> <p>1 STEWART</p> <p>2 based on? Actually no -- strike that.</p> <p>3 Did they give you a date when</p> <p>4 it was transcribed?</p> <p>5 A No.</p> <p>6 Q Did they tell you that it was</p> <p>7 transcribed after the sound recording</p> <p>8 was created?</p> <p>9 A It was implied in the way it</p> <p>10 was described to me that this</p> <p>11 gentleman, whose name I don't recall,</p> <p>12 generally worked with Mr. Townsend and</p> <p>13 transcribed his music after it was</p> <p>14 recorded and then it was deposited in</p> <p>15 the U.S. Copyright Office. That was</p> <p>16 the way they worked and that's what was</p> <p>17 implied in the way it was described to</p> <p>18 me.</p> <p>19 Q Did plaintiff's counsel</p> <p>20 specifically say to you that the</p> <p>21 deposit copy of Let's Get It On was</p> <p>22 transcribed after the sound recording</p> <p>23 was created?</p> <p>24 MR. FRANK: Objection.</p> <p>25 Relevance. Asked and answered.</p>
<p style="text-align: right;">Page 87</p> <p>1 STEWART</p> <p>2 practice and the fact that an associate</p> <p>3 of Mr. Townsend created it?</p> <p>4 A Yes.</p> <p>5 Q But you don't know when that</p> <p>6 associate of Mr. Townsend actually</p> <p>7 transcribed it, correct?</p> <p>8 A I was not there when he did.</p> <p>9 Q And you haven't done anything</p> <p>10 to determine when that occurred,</p> <p>11 correct?</p> <p>12 A I don't know what I could do</p> <p>13 beyond what I've done, which is to ask</p> <p>14 about it, who did it and circumstances.</p> <p>15 I mean --</p> <p>16 Q Who did you ask?</p> <p>17 A Counsel.</p> <p>18 Q And did they give you a date</p> <p>19 when it was transcribed?</p> <p>20 A No.</p> <p>21 Q And did they tell you that it</p> <p>22 was transcribed after the sound</p> <p>23 recording was created?</p> <p>24 A That was my understanding.</p> <p>25 Q What was your understanding</p>	<p style="text-align: right;">Page 89</p> <p>1 STEWART</p> <p>2 Go ahead.</p> <p>3 A I thought it was strongly</p> <p>4 implied in what they said.</p> <p>5 Q Yes or no, did they</p> <p>6 specifically say to you that the</p> <p>7 deposit copy was transcribed after the</p> <p>8 sound recording was created?</p> <p>9 A I don't remember their exact</p> <p>10 words.</p> <p>11 MR. GOLDSMITH: Going back a</p> <p>12 little bit. I found the provision</p> <p>13 of the report from you to us on</p> <p>14 December 8, 2017 by e-mail, and</p> <p>15 there is -- there are two</p> <p>16 attachments, one is Mr. -- Dr.</p> <p>17 Stewart's CV and the other is a</p> <p>18 one-page document that lists his</p> <p>19 prior testimony during the last</p> <p>20 four years. There's no other</p> <p>21 attachments to the report that was</p> <p>22 provided to us.</p> <p>23 MR. FRANK: Okay.</p> <p>24 Q What is your best</p> <p>25 recollection of what you intended to</p>

<p style="text-align: right;">Page 118</p> <p>1 STEWART</p> <p>2 that for us?</p> <p>3 A It looks like a deposit copy</p> <p>4 for Let's Get It On.</p> <p>5 Q And it's your testimony that</p> <p>6 at the time that you had received Dr.</p> <p>7 Ferrara's report you had already seen</p> <p>8 the deposit copy for Let's Get It On?</p> <p>9 A Yes. I had seen this deposit</p> <p>10 copy that we're looking at right now.</p> <p>11 Q So I'm going to show you what</p> <p>12 we have marked as Stewart Exhibit 5.</p> <p>13 (Let's Get It On deposit</p> <p>14 copy, was marked Stewart Exhibit</p> <p>15 5, for identification, as of this</p> <p>16 date.)</p> <p>17 Q Which is just a copy, I will</p> <p>18 represent to you another copy -- a</p> <p>19 larger copy of the Let's Get It On</p> <p>20 deposit copy. And I would ask you if</p> <p>21 you could, on that exhibit, hand write</p> <p>22 the structural sections of Let's Get It</p> <p>23 On?</p> <p>24 MR. FRANK: We're going to</p> <p>25 direct him not do that. He's not</p>	<p style="text-align: right;">Page 120</p> <p>1 STEWART</p> <p>2 you.</p> <p>3 I don't think there's any</p> <p>4 predicate or good faith offer</p> <p>5 prove to do that.</p> <p>6 MS. FARKAS: Why do I need a</p> <p>7 predicate or a good faith offer to</p> <p>8 prove? I'm deposing your expert.</p> <p>9 MR. FRANK: I'm going to</p> <p>10 direct him not to do that.</p> <p>11 MS. FARKAS: All right. Then</p> <p>12 we'll have to get the judge on the</p> <p>13 phone.</p> <p>14 Q Dr. Stewart, in the other</p> <p>15 cases in which you've testified as an</p> <p>16 expert have you ever been asked to</p> <p>17 markup sheet music or markup an exhibit</p> <p>18 before?</p> <p>19 A Yes.</p> <p>20 Q And have you done it?</p> <p>21 A Once I was told that I could</p> <p>22 do it and another time I was told not</p> <p>23 to.</p> <p>24 Q So in the time that you were</p> <p>25 told you could do it you did it,</p>
<p style="text-align: right;">Page 119</p> <p>1 STEWART</p> <p>2 going to create any evidence. He</p> <p>3 will comment or testify as to</p> <p>4 what's before him, but he's not</p> <p>5 going to do that.</p> <p>6 MS. FARKAS: You're directing</p> <p>7 him not to do that?</p> <p>8 MR. FRANK: I'm directing him</p> <p>9 not to do that.</p> <p>10 You could ask him anything</p> <p>11 you want, but he's not going to</p> <p>12 create evidence for us.</p> <p>13 MS. FARKAS: What's the basis</p> <p>14 for that objection?</p> <p>15 MR. FRANK: Because you're</p> <p>16 asking him to create evidence.</p> <p>17 It's irrelevant. His position</p> <p>18 here is to testify as to his</p> <p>19 report and he can comment on</p> <p>20 Mr. Ferrara's report.</p> <p>21 But we don't have expert</p> <p>22 witnesses create documents at your</p> <p>23 direction during depositions. You</p> <p>24 could you ask him anything, he's</p> <p>25 not going to create documents for</p>	<p style="text-align: right;">Page 121</p> <p>1 STEWART</p> <p>2 correct?</p> <p>3 A Yes.</p> <p>4 Q And do you have any knowledge</p> <p>5 as to whether or not the exhibits that</p> <p>6 you marked up were allowed and</p> <p>7 considered by the court?</p> <p>8 A I don't.</p> <p>9 Q Did you ever see them in</p> <p>10 papers that were submitted to the</p> <p>11 court?</p> <p>12 A I'm not sure what you mean</p> <p>13 papers submitted to the court.</p> <p>14 Q So in the other cases where</p> <p>15 you say -- in the other case where you</p> <p>16 said that you were permitted to markup</p> <p>17 an exhibit, which case was that?</p> <p>18 A You see I seem to recall</p> <p>19 doing that in a deposition and I'll</p> <p>20 have to think now which one it was. I</p> <p>21 mean, it's possible I'm remembering</p> <p>22 incorrectly. I remember being</p> <p>23 instructed not to and I didn't and</p> <p>24 nothing happened.</p> <p>25 Q Well, let's -- looking at the</p>

<p style="text-align: right;">Page 122</p> <p>1 STEWART</p> <p>2 deposit copy of Let's Get it On, if you</p> <p>3 were to -- if you were permitted to</p> <p>4 tell me what -- how to chart out the</p> <p>5 structure of the deposit copy of Let's</p> <p>6 Get It On, and if you look at the first</p> <p>7 bar of the music and looking at the</p> <p>8 deposit copy, what section of the song</p> <p>9 would you say begins at the first bar?</p> <p>10 A The verse.</p> <p>11 Q And what bar would you say</p> <p>12 the verse ends?</p> <p>13 A I believe -- I can count</p> <p>14 through it, but I believe it ends at</p> <p>15 the 16th. Yes, 16th.</p> <p>16 Q And is the 16th the fourth</p> <p>17 line down, last bar?</p> <p>18 A Penultimate bar fourth line</p> <p>19 down.</p> <p>20 Q Where it says let's get it?</p> <p>21 A Well, the let's get it is</p> <p>22 actually part of the next section.</p> <p>23 Q What would the -- so the next</p> <p>24 section would begin on the 16th bar?</p> <p>25 A Well, in some sense because</p>	<p style="text-align: right;">Page 124</p> <p>1 STEWART</p> <p>2 begins at we're all sensitive people, I</p> <p>3 believe. Yeah.</p> <p>4 Q So I'm looking at Page 2.</p> <p>5 What I'm counting as bar 32, the last</p> <p>6 bar of the first line of Page 2 that</p> <p>7 has the lyrics we're all?</p> <p>8 A Yeah, that's the beginning of</p> <p>9 the next section.</p> <p>10 Q What section is that?</p> <p>11 A A verse.</p> <p>12 Q How long does that verse go</p> <p>13 on for?</p> <p>14 A Sixteen measures again.</p> <p>15 Q So is it your testimony that</p> <p>16 the next section would begin on the</p> <p>17 fifth line down last bar with the</p> <p>18 lyrics, there's?</p> <p>19 A Correct.</p> <p>20 Q And what section of the song</p> <p>21 is that?</p> <p>22 A It's another verse.</p> <p>23 Q Okay.</p> <p>24 And how long does that go</p> <p>25 for?</p>
<p style="text-align: right;">Page 123</p> <p>1 STEWART</p> <p>2 of the melodic phrase, but then in</p> <p>3 terms of the underpinning harmonies and</p> <p>4 so forth you could say that in the</p> <p>5 17th bar the next section begins.</p> <p>6 Q And what section is that?</p> <p>7 A It's the chorus.</p> <p>8 Q And when does that chorus</p> <p>9 section end, what bar?</p> <p>10 A I think 16 bars later. Yes.</p> <p>11 Q So is that on Page 2?</p> <p>12 A Yes.</p> <p>13 Q It ends with the phrase with</p> <p>14 so much to give?</p> <p>15 A Well, with so much to give is</p> <p>16 actually again -- let me just count.</p> <p>17 That's probably the same as before, the</p> <p>18 melodic phrase and the lyrics are</p> <p>19 anticipating the next section, but in</p> <p>20 terms of the underpinnings it begins on</p> <p>21 the measure to give. But let me count.</p> <p>22 No. Sixteen measures ends</p> <p>23 with the oh, I believe.</p> <p>24 Q Okay.</p> <p>25 A So then the next section</p>	<p style="text-align: right;">Page 125</p> <p>1 STEWART</p> <p>2 A Probably 16 again. There's a</p> <p>3 real pattern happening here, right?</p> <p>4 Yeah. In fact, this is indicated by</p> <p>5 the double bar at the bottom of the</p> <p>6 page, that is the end of that verse.</p> <p>7 Q So you're referring to the</p> <p>8 bottom of Page 2, the last line at the</p> <p>9 end of the third bar?</p> <p>10 A Um-hum.</p> <p>11 Q And the fourth --</p> <p>12 A The third bar on the bottom</p> <p>13 line on Page 2 is the end of that</p> <p>14 section and it's indicated very clearly</p> <p>15 with a double bar.</p> <p>16 Q And so the next section</p> <p>17 begins in the bar with the rests and</p> <p>18 the lyric don't?</p> <p>19 A Yes, and the chord A-flat</p> <p>20 written above.</p> <p>21 Q Correct.</p> <p>22 And that -- and that is -- I</p> <p>23 agree. I concur that there's an A-flat</p> <p>24 there. Got one in.</p> <p>25 And what section is that?</p>

<p style="text-align: right;">Page 126</p> <p>1 STEWART</p> <p>2 A I would call that the bridge.</p> <p>3 Q How long does that go for?</p> <p>4 A I think it goes on all the</p> <p>5 way to the next double bar on Page 3.</p> <p>6 Q Are you referring to Page 3</p> <p>7 the eighth line down, second line from</p> <p>8 the bottom?</p> <p>9 A Yes.</p> <p>10 Q Where there's the double bar?</p> <p>11 A Um-hum.</p> <p>12 Q And the last bar of music has</p> <p>13 the lyrics it on?</p> <p>14 A Yes.</p> <p>15 Q And what section begins at</p> <p>16 that bar?</p> <p>17 A Another verse.</p> <p>18 Q You would call that a verse?</p> <p>19 A Yeah.</p> <p>20 Q And when does that end?</p> <p>21 A Well -- actually, yeah,</p> <p>22 because it has the hook basically let's</p> <p>23 get it on I think we have to call it a</p> <p>24 chorus. Sorry.</p> <p>25 Q When does that end?</p>	<p style="text-align: right;">Page 128</p> <p>1 STEWART</p> <p>2 Q And you identified a new</p> <p>3 section beginning in the second to last</p> <p>4 line of Page 3, and in the last bar of</p> <p>5 that line that begins with the lyrics</p> <p>6 it on. And I'm asking you what would</p> <p>7 you call that section?</p> <p>8 A Yeah. It's a little</p> <p>9 difficult. This section that begins</p> <p>10 with let's get it on, to me it's a</p> <p>11 little nebulous what to call it. It</p> <p>12 appears it has elements of the chorus</p> <p>13 because its got the hook let's get it</p> <p>14 on, but then it kind of starts to seem</p> <p>15 like it did turns back into a verse</p> <p>16 sort of partway through. So I'm having</p> <p>17 a hard time just saying that it's</p> <p>18 clearly one or the other, but it's</p> <p>19 definitely another section.</p> <p>20 Q Where would that section end?</p> <p>21 A That would end in the next</p> <p>22 place where it says A-flat on Page 4,</p> <p>23 and there we have another bridge just</p> <p>24 as before it began on A-flat on page --</p> <p>25 at the bottom of Page 2, and now we</p>
<p style="text-align: right;">Page 127</p> <p>1 STEWART</p> <p>2 MS. RICE: I'm sorry, I want</p> <p>3 to make sure I understand the</p> <p>4 question.</p> <p>5 Are we asking where he thinks</p> <p>6 that verse that he just talked</p> <p>7 about ends or where the next</p> <p>8 reference to the chorus is? What</p> <p>9 are you -- because he's talked</p> <p>10 about both and so I'm not sure</p> <p>11 what you're --</p> <p>12 Q Do you understand the</p> <p>13 question?</p> <p>14 A The question that's pending</p> <p>15 now is where is the next section,</p> <p>16 correct? Where does the next section</p> <p>17 begin?</p> <p>18 Q Right. But let's make sure</p> <p>19 the word next is the same to both of</p> <p>20 us.</p> <p>21 So we've -- let's just start</p> <p>22 from the beginning. We've identified</p> <p>23 there's a verse -- well, we're on Page</p> <p>24 3 of the deposit copy, correct?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 129</p> <p>1 STEWART</p> <p>2 have -- moving to A-flat again here.</p> <p>3 So where it says come on, come on, come</p> <p>4 on, come on, come on, that's --</p> <p>5 Q So just to be clear, you're</p> <p>6 saying that the next section begins on</p> <p>7 Page 4, Line 7?</p> <p>8 A Yes.</p> <p>9 Q Bar 4?</p> <p>10 A Yes.</p> <p>11 Q What would you call that</p> <p>12 section?</p> <p>13 A Bridge, a short bridge.</p> <p>14 Q Okay.</p> <p>15 And how long does that --</p> <p>16 A Until the next double bar.</p> <p>17 So that would last one, two, three,</p> <p>18 four, five, six, seven -- eight</p> <p>19 measures.</p> <p>20 Q So now we're on the bottom of</p> <p>21 the same page?</p> <p>22 A Yes.</p> <p>23 Q The last bar of music?</p> <p>24 A Yes.</p> <p>25 Q And what would you call that?</p>

<p style="text-align: right;">Page 130</p> <p>1 STEWART</p> <p>2 A That's another sort of tricky</p> <p>3 one. I guess you could call it another</p> <p>4 verse, but it's also kind of the outro</p> <p>5 or ending.</p> <p>6 Q So would you call either the</p> <p>7 outro or --</p> <p>8 A An ending that is based kind</p> <p>9 of on the verse and it just kind of</p> <p>10 repeats to the end.</p> <p>11 Q Thank you.</p> <p>12 If you look at Page 5 of the</p> <p>13 Ferrara report.</p> <p>14 If you look at the structure</p> <p>15 of Thinking Out Loud that Dr. Ferrara</p> <p>16 has written at the bottom of Page 5.</p> <p>17 Do you see that?</p> <p>18 A Yes.</p> <p>19 Q I'm going to read to you what</p> <p>20 you have just told me is the structure</p> <p>21 of the deposit copy of Let's Get It On,</p> <p>22 and I'd like you to compare it to the</p> <p>23 structure of Thinking Out Loud as</p> <p>24 charted by Dr. Ferrara.</p> <p>25 So you have told me that it's</p>	<p style="text-align: right;">Page 132</p> <p>1 STEWART</p> <p>2 they have similarities.</p> <p>3 Q But they're different,</p> <p>4 correct?</p> <p>5 MR. FRANK: Asked and</p> <p>6 answered.</p> <p>7 Objection.</p> <p>8 A There are differences and</p> <p>9 there are similarities.</p> <p>10 Q Well, if something has</p> <p>11 differences and similarities they're</p> <p>12 not the same, correct?</p> <p>13 A They are not identical.</p> <p>14 Q They're not even close to</p> <p>15 identical, are they?</p> <p>16 MR. FRANK: Objection.</p> <p>17 Asked and answered.</p> <p>18 You can go ahead.</p> <p>19 A I have to say they have</p> <p>20 similarities and differences. And I</p> <p>21 think some of the similarities are</p> <p>22 important. I'd be happy to tell you</p> <p>23 what you they are.</p> <p>24 Q I'm simply asking you if the</p> <p>25 structure of the two songs is the same.</p>
<p style="text-align: right;">Page 131</p> <p>1 STEWART</p> <p>2 verse 16 bars, chorus 16 bars, verse 16</p> <p>3 bars, verse 16 bars, bridge, I believe</p> <p>4 you also said 16 bars. The next</p> <p>5 section --</p> <p>6 A The bridge, no, it was</p> <p>7 longer. That first bridge in Let's Get</p> <p>8 It On is longer.</p> <p>9 Q You're right, 32 bars.</p> <p>10 A Um-hum.</p> <p>11 Q So bridge 32 bars. The next</p> <p>12 section you were unclear whether you</p> <p>13 would label that as a verse or a</p> <p>14 chorus?</p> <p>15 A Um-hum.</p> <p>16 Q You had it at 32 bars. The</p> <p>17 next section you had as a bridge for</p> <p>18 eight bars, and then you had the outro</p> <p>19 or verse for the remainder of the song?</p> <p>20 A Yes.</p> <p>21 Q Would you agree that the</p> <p>22 structure of the Let's Get It On</p> <p>23 deposit copy and Thinking Out Loud are</p> <p>24 different?</p> <p>25 A They have differences and</p>	<p style="text-align: right;">Page 133</p> <p>1 STEWART</p> <p>2 I didn't ask you if have they have</p> <p>3 similarities, I asked you if they are</p> <p>4 the same structurally?</p> <p>5 MR. FRANK: Objection. Asked</p> <p>6 and answered.</p> <p>7 Go ahead.</p> <p>8 Q Are the structures of the</p> <p>9 deposit copy of Let's Get It On and</p> <p>10 Thinking Out Loud the same?</p> <p>11 A They have important</p> <p>12 similarities and they have important</p> <p>13 differences.</p> <p>14 Q What key is the deposit copy</p> <p>15 of Let's Get It On in?</p> <p>16 A E-flat.</p> <p>17 Q And what key is the recorded</p> <p>18 version of Let's Get It On in?</p> <p>19 A E-flat.</p> <p>20 Q And your transcriptions are</p> <p>21 the key of D major, correct?</p> <p>22 A D major?</p> <p>23 Q Yeah.</p> <p>24 A Yeah because I transposed</p> <p>25 them to the same key for comparison</p>

<p style="text-align: right;">Page 134</p> <p>1 STEWART</p> <p>2 purposes which is standard</p> <p>3 musicological procedure.</p> <p>4 Q And what is the basic chord</p> <p>5 progression in Let's Get It On deposit</p> <p>6 copy?</p> <p>7 A For the verses and choruses</p> <p>8 it is in the key of E-flat. Should I</p> <p>9 give it to you or in the key of D or</p> <p>10 using Roman numerals?</p> <p>11 Q No, Roman numerals.</p> <p>12 A One with the capital I</p> <p>13 meaning major, three with three small</p> <p>14 Is meaning minor, and then IV major, V</p> <p>15 major. So I, III, IV, V.</p> <p>16 Q And would I be correct that</p> <p>17 the V is a V major VII?</p> <p>18 A No, it's not.</p> <p>19 Q So it's your testimony that</p> <p>20 the deposit copy, the last chord in the</p> <p>21 chord progression is not a V major VII?</p> <p>22 A It would be my testimony,</p> <p>23 yes.</p> <p>24 Q Would you agree that the</p> <p>25 basic chord progression in the Let's</p>	<p style="text-align: right;">Page 136</p> <p>1 STEWART</p> <p>2 used in other compositions prior to</p> <p>3 Let's Get It On.</p> <p>4 Q And would you agree that it's</p> <p>5 a relatively common chord progression</p> <p>6 that predates Let's Get It On?</p> <p>7 A I wouldn't say it's that</p> <p>8 common.</p> <p>9 Q How common would you say it</p> <p>10 is?</p> <p>11 A Well, there were -- out of</p> <p>12 hundreds of thousands of songs there</p> <p>13 were a handful who used it. I can't</p> <p>14 really -- I mean it was more than -- a</p> <p>15 lot more than one. More than one and</p> <p>16 certainly not --</p> <p>17 Q Hundreds?</p> <p>18 A I don't think so.</p> <p>19 Q Dozens?</p> <p>20 A I think Dr. Ferrara has done</p> <p>21 a pretty good job of trying to find</p> <p>22 every song that has a progression</p> <p>23 that's even remotely similar and he's</p> <p>24 come up with how many.</p> <p>25 Q What makes you think he's</p>
<p style="text-align: right;">Page 135</p> <p>1 STEWART</p> <p>2 Get It On deposit copy and Thinking Out</p> <p>3 Loud are not identical?</p> <p>4 A They are extremely similar</p> <p>5 but they are not identical.</p> <p>6 Q Looking at the deposit copy,</p> <p>7 the fourth chord depicted there, what</p> <p>8 do you see written there?</p> <p>9 A B-flat VII.</p> <p>10 Q So is that not a V major VII?</p> <p>11 A It's not.</p> <p>12 Q What is it?</p> <p>13 A It's a V dominant VII.</p> <p>14 Q V dominant VII?</p> <p>15 A Yes.</p> <p>16 Q How would you actually notate</p> <p>17 that in your report Roman Numeral wise?</p> <p>18 A V-VII. Roman Numeral 5.</p> <p>19 Q Roman numeral 5 like a V --</p> <p>20 an upper case V with a VII.</p> <p>21 Do you agree that the basic</p> <p>22 chord progression in the Let's Get It</p> <p>23 On deposit copy is not original to</p> <p>24 Let's Get It On?</p> <p>25 A These four chords have been</p>	<p style="text-align: right;">Page 137</p> <p>1 STEWART</p> <p>2 done a pretty good job of finding every</p> <p>3 song that has that progression?</p> <p>4 A Well, because this is what he</p> <p>5 kind of always does is try to bury us</p> <p>6 with so-called prior art that he says</p> <p>7 is similar.</p> <p>8 Q Well, how many pieces of</p> <p>9 prior art do you think are enough to</p> <p>10 prove that it's not original to Let's</p> <p>11 Get It On?</p> <p>12 A Well, I think I already said</p> <p>13 it's not original so I don't think we</p> <p>14 have any issue there. I said that</p> <p>15 other songs have this chord</p> <p>16 progression.</p> <p>17 Q So can I turn your attention</p> <p>18 to Visual Exhibit E to Dr. Ferrara's</p> <p>19 report?</p> <p>20 A Visual Exhibit E.</p> <p>21 Yes.</p> <p>22 Q And do you see that this is</p> <p>23 an excerpt from a guitar method book</p> <p>24 called Guitar for Advanced Beginners.</p> <p>25 Do you see that?</p>

<p style="text-align: right;">Page 138</p> <p>1 STEWART</p> <p>2 A It's very difficult to read.</p> <p>3 But, yes, it seems to say that.</p> <p>4 Q If you turn the page twice</p> <p>5 you can see that there's an excerpt</p> <p>6 from Page 84 of this Guitar Book for</p> <p>7 Advanced Beginners?</p> <p>8 A Yes.</p> <p>9 Q And do you see about midway</p> <p>10 down -- the bottom half of the page</p> <p>11 references the chord progression that</p> <p>12 is at issue here.</p> <p>13 Do you see that? The</p> <p>14 I-III-IV-V chord progression?</p> <p>15 A Yes.</p> <p>16 Q And do you see the sentence</p> <p>17 right above that that says by the</p> <p>18 way -- well, hold on. The start of</p> <p>19 that section says, we first played the</p> <p>20 I-III-IV-V progression in Class VII.</p> <p>21 And then I'm skipping over the next</p> <p>22 sentence, is says is shows up in songs</p> <p>23 like "If I Had A Hammer" by Pete Seeger</p> <p>24 and Lee Hays, "Cruel to be Kind" by</p> <p>25 Nick Lowe, "Ziggy Stardust" by David</p>	<p style="text-align: right;">Page 140</p> <p>1 STEWART</p> <p>2 A Yes.</p> <p>3 Q Do you agree?</p> <p>4 A First of all --</p> <p>5 MR. FRANK: Which part of the</p> <p>6 sentence are you asking him if he</p> <p>7 agrees with? There's several</p> <p>8 propositions. Whether Marvin Gaye</p> <p>9 plagiarized Let's Get It On or</p> <p>10 whether it's common progression</p> <p>11 and every other professional</p> <p>12 songwriter uses it?</p> <p>13 Q Is there anything in that</p> <p>14 sentence that you disagree with?</p> <p>15 A Well, just on your previous</p> <p>16 sentence that you read I would like to</p> <p>17 say that some of these songs that are</p> <p>18 listed postdate Let's Get It On, so</p> <p>19 that needs to be pointed out. No, I</p> <p>20 have not listened to all of them. But</p> <p>21 in terms of the sentence you just read,</p> <p>22 I don't think I have a problem with</p> <p>23 that. I think what's unique about what</p> <p>24 Marvin Gaye did was the way that he</p> <p>25 expressed it -- this chord progression</p>
<p style="text-align: right;">Page 139</p> <p>1 STEWART</p> <p>2 Bowe, "Good Little Girl/Bad Little Boy"</p> <p>3 from Adventure Time, "Stuck on You" by</p> <p>4 Lionel Richie, "Live and Let Die" by</p> <p>5 the Wings, "Fun, Fun, Fun" by the Beach</p> <p>6 Boys, "Crocodile Rock" by Elton John</p> <p>7 and "Let's Get It On" by Marvin Gaye.</p> <p>8 Do you see that?</p> <p>9 A Yes.</p> <p>10 Q Do you disagree with any of</p> <p>11 those? Do you disagree with anything</p> <p>12 in that sentence?</p> <p>13 A I can't really comment on</p> <p>14 that because I haven't listened to all</p> <p>15 of these songs to confirm that.</p> <p>16 Q And it says, by the which</p> <p>17 even though Let's Get It On was</p> <p>18 recorded in 1973 which is after dozens</p> <p>19 of other I-III-IV-V songs were</p> <p>20 recorded, I firmly believe that Marvin</p> <p>21 Gaye did not plagiarize this song - he</p> <p>22 was simply writing a song using a</p> <p>23 common progression just like every</p> <p>24 other professional songwriter does.</p> <p>25 Do you see that sentence?</p>	<p style="text-align: right;">Page 141</p> <p>1 STEWART</p> <p>2 in a distinctive way. So this case is</p> <p>3 not really just about abstract four</p> <p>4 chords, it's about how these four</p> <p>5 chords were expressed in this</p> <p>6 composition.</p> <p>7 Q Well, but if the -- if the</p> <p>8 existence of this chord progression</p> <p>9 were the only similarity that you found</p> <p>10 between these two songs, would your</p> <p>11 conclusion still be that the similarity</p> <p>12 can only be the result of copying?</p> <p>13 MR. FRANK: Objection,</p> <p>14 predicate.</p> <p>15 Go ahead.</p> <p>16 A Could you repeat that?</p> <p>17 Q Sure.</p> <p>18 If the existence of this</p> <p>19 similar chord progression were the only</p> <p>20 similarity between these two</p> <p>21 compositions, would your conclusion</p> <p>22 still be that the similarity can only</p> <p>23 be the result of copying from Let's Get</p> <p>24 It On?</p> <p>25 A Well, if it were just this</p>

<p style="text-align: right;">Page 142</p> <p>1 STEWART</p> <p>2 chord progression in the abstract that</p> <p>3 were the only thing in common; yeah, it</p> <p>4 would not -- what was your phrase?</p> <p>5 Q Well, I'm use your phrase</p> <p>6 from your report which is that these</p> <p>7 similarities can only be the result of</p> <p>8 copying Let's Get It On?</p> <p>9 A That would not be my</p> <p>10 conclusion if that were the only thing.</p> <p>11 And that's, again, the chord</p> <p>12 progression in the abstract, just these</p> <p>13 Roman numerals, not the way that it's</p> <p>14 actually expressed in terms of</p> <p>15 rhythmically and all the other details.</p> <p>16 MS. FARKAS: Why don't --</p> <p>17 it's probably a good time for a</p> <p>18 break.</p> <p>19 VIDEOGRAPHER: The time is</p> <p>20 12:50. This is the end of Video</p> <p>21 2. We're off the record.</p> <p>22 (Whereupon, a lunch recess</p> <p>23 was taken at 12:50 p.m.)</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 144</p> <p>1 STEWART</p> <p>2 Maybe I misspoke, I will say it again.</p> <p>3 A I thought it said.</p> <p>4 Q I might have misspoken.</p> <p>5 So we had marked a report</p> <p>6 from you that was signed by you and</p> <p>7 dated June 3, 2015, correct?</p> <p>8 A Yes.</p> <p>9 Q And you had testified</p> <p>10 earlier, I believe, that you had made</p> <p>11 certain changes to that report dated</p> <p>12 June 3, 2015, a few days later; is that</p> <p>13 correct?</p> <p>14 A Yes.</p> <p>15 Q And that you had sent that</p> <p>16 onto plaintiff's counsel, correct?</p> <p>17 A Yes.</p> <p>18 Q How did you send it to</p> <p>19 plaintiff's counsel, via e-mail?</p> <p>20 A Well, you know, I left for</p> <p>21 Europe like that same week and I recall</p> <p>22 that I attached it to an e-mail right</p> <p>23 before I left. And then I was kind of</p> <p>24 out of touch for a couple of weeks.</p> <p>25 MS. FARKAS: Well, we would</p>
<p style="text-align: right;">Page 143</p> <p>1 STEWART</p> <p>2 A F T E R N O O N S E S S I O N</p> <p>3 (Time noted: 2:00 p.m.)</p> <p>4 A-L-E-X-A-N-D-E-R S-T-E-W-A-R-T,</p> <p>5 Resumed, having been previously sworn by a</p> <p>6 Notary Public within and for the State of New York,</p> <p>7 was further examined and testified under oath as</p> <p>8 follows:</p> <p>9 VIDEOGRAPHER: The time is</p> <p>10 2:00 p.m. We're on the record.</p> <p>11 This is Video 3.</p> <p>12 CONTINUED EXAMINATION BY MS. FARKAS:</p> <p>13 Q Good afternoon, Dr. Stewart.</p> <p>14 A Good afternoon.</p> <p>15 Q You had testified earlier</p> <p>16 about the June 2015 report and you had</p> <p>17 testified that you had corrected or</p> <p>18 made certain changes to the June 2015</p> <p>19 report a few days after you transmitted</p> <p>20 the report dated June 3, 2015 to</p> <p>21 plaintiff's counsel; is that correct?</p> <p>22 A I'm confused because I'm not</p> <p>23 sure what you mean by the June 15th</p> <p>24 report.</p> <p>25 Q No, I said the June 2015.</p>	<p style="text-align: right;">Page 145</p> <p>1 STEWART</p> <p>2 ask for the transmittal e-mail to</p> <p>3 be produced to us along with</p> <p>4 whatever was sent along with it.</p> <p>5 MR. FRANK: Sure.</p> <p>6 Q Do you know -- I believe both</p> <p>7 your June 2015 report and your</p> <p>8 December 2017 report identify the</p> <p>9 compensation for your preparing the</p> <p>10 report and analysis at \$275 an hour; is</p> <p>11 that correct?</p> <p>12 A Yes.</p> <p>13 Q Do you know what the total</p> <p>14 compensation that you've been paid to</p> <p>15 date is on this matter?</p> <p>16 A I don't recall.</p> <p>17 Q We have two transmittal</p> <p>18 letters, the first one I had shown you</p> <p>19 from April 2015 that had a \$2,000</p> <p>20 payment, and I will represent to you</p> <p>21 that there's a second letter that has</p> <p>22 another 2000 payment sent to you.</p> <p>23 Do you recall whether you</p> <p>24 were paid anything more than that</p> <p>25 \$4,000 on this matter?</p>

<p style="text-align: right;">Page 154</p> <p>1 STEWART</p> <p>2 the Let's Get It On RP?</p> <p>3 A Okay.</p> <p>4 Now we're not comparing with</p> <p>5 the sheet music that you gave me a</p> <p>6 minute ago. We're not calling this RP,</p> <p>7 right?</p> <p>8 Q No.</p> <p>9 A The sheet music?</p> <p>10 Q It's the work that you used</p> <p>11 to render your report.</p> <p>12 A I can't answer that without</p> <p>13 going through the whole recording and</p> <p>14 comparing it word-for-word.</p> <p>15 Q On Page 12 of your report you</p> <p>16 say, quote, I have found few important</p> <p>17 lyrical similarities; is that correct?</p> <p>18 A That's correct.</p> <p>19 Q And is there anything in the</p> <p>20 lyrics that you see in the deposit copy</p> <p>21 that would cause you to believe that</p> <p>22 you would come to a different</p> <p>23 conclusion if you were to review the</p> <p>24 lyrics of the deposit copy?</p> <p>25 A In other words, do I -- would</p>	<p style="text-align: right;">Page 156</p> <p>1 STEWART</p> <p>2 A I have not really focused on</p> <p>3 the lyrics between the deposit copy and</p> <p>4 Mr. Sheeran's song. And as I'm looking</p> <p>5 at it now, I mean there are a lot of</p> <p>6 references to "baby" and "sugar", I</p> <p>7 think there's also a sugar in</p> <p>8 Mr. Sheeran's song. But I think</p> <p>9 there's nothing in this that I see that</p> <p>10 would cause me to radically revise that</p> <p>11 statement, no. I think there may be</p> <p>12 some words held in common, but I don't</p> <p>13 see --</p> <p>14 Q Do you think the appearance</p> <p>15 of the word "baby" in two songs is</p> <p>16 something that gives rise to an</p> <p>17 inference of copying?</p> <p>18 A No. Not necessarily, no.</p> <p>19 I mean, you have it in the</p> <p>20 context of other similarities, too,</p> <p>21 but...</p> <p>22 Q Are you saying that baby</p> <p>23 doesn't appear in the recording of</p> <p>24 Let's Get It On?</p> <p>25 A It does. I don't know if it</p>
<p style="text-align: right;">Page 155</p> <p>1 STEWART</p> <p>2 I still stand by that statement that</p> <p>3 there were few similarities in the</p> <p>4 lyrics between the deposit copy of</p> <p>5 Let's Get It On and the recorded</p> <p>6 version of Thinking Out Loud?</p> <p>7 Q Correct.</p> <p>8 A I see -- I mean, I've not</p> <p>9 gone through this with that particular</p> <p>10 focus in mind, so I can't really give</p> <p>11 you a definitive answer.</p> <p>12 Q But you testified earlier</p> <p>13 that you reviewed the deposit copy of</p> <p>14 Let's Get It On before you issued your</p> <p>15 December of 2017 report, right?</p> <p>16 A Um-hum. Yes.</p> <p>17 Q And I believe you also</p> <p>18 testified that there was nothing in the</p> <p>19 deposit copy that would cause you to</p> <p>20 change your December 2017 report,</p> <p>21 correct?</p> <p>22 A That's correct.</p> <p>23 Q And so that would pertain to</p> <p>24 your conclusion about the lyrics, as</p> <p>25 well?</p>	<p style="text-align: right;">Page 157</p> <p>1 STEWART</p> <p>2 appears as frequently. Anyway, I</p> <p>3 think -- rather than belabor this, I</p> <p>4 don't think that I would change that</p> <p>5 opinion, just to be clear.</p> <p>6 Okay.</p> <p>7 Q On Page 3 of your report you</p> <p>8 state that, quote, both songs</p> <p>9 occasionally deploy a, quote, blue,</p> <p>10 closed quote, third, open paren, (a</p> <p>11 third degree of the scale that ranges</p> <p>12 from minor to major or somewhere in</p> <p>13 between), closed paren closed quote.</p> <p>14 Correct?</p> <p>15 A Yes.</p> <p>16 Q Do you agree that the use of</p> <p>17 an occasional blue -- excuse me, the</p> <p>18 use of -- let me start over.</p> <p>19 Do you agree that the use of</p> <p>20 an occasional blue note is not original</p> <p>21 to Let's Get It On RP?</p> <p>22 A I would agree with that</p> <p>23 statement.</p> <p>24 Q Would you agree that the use</p> <p>25 of an occasional blue note was common</p>

<p style="text-align: right;">Page 158</p> <p>1 STEWART</p> <p>2 before Let's Get It On RP?</p> <p>3 A Yes.</p> <p>4 Q Would you agree in terms of</p> <p>5 pitch that an F is a different note</p> <p>6 than an F-sharp?</p> <p>7 A Devoid of any context, yes.</p> <p>8 Q Do you -- if you can turn to</p> <p>9 the deposit copy of Let's Get It On.</p> <p>10 A Um-hum.</p> <p>11 Q Do you see any blue notes</p> <p>12 there?</p> <p>13 A Yes.</p> <p>14 Q Where do you see them?</p> <p>15 A In the second and third</p> <p>16 measure. In the fifth measure. Sixth,</p> <p>17 and seventh.</p> <p>18 Q Can you tell me where you see</p> <p>19 it in the third measure?</p> <p>20 A On the very first note there</p> <p>21 is a G-flat. But the very first G at</p> <p>22 the beginning of the piece is also --</p> <p>23 it could be considered within that</p> <p>24 spectrum. I mean, all the thirds are</p> <p>25 regarded as the same toneme,</p>	<p style="text-align: right;">Page 160</p> <p>1 STEWART</p> <p>2 Q Focusing on that second</p> <p>3 sentence about it making a lasting</p> <p>4 first impression, is that your expert</p> <p>5 opinion?</p> <p>6 A Yes.</p> <p>7 Q And what is that opinion</p> <p>8 based on? What expertise do you have</p> <p>9 in what creates a lasting first</p> <p>10 impression?</p> <p>11 A It's based on many things.</p> <p>12 It's based first and -- first of all on</p> <p>13 my experience as a listener, and I know</p> <p>14 that first impressions are important</p> <p>15 and tend to be in clear focus because</p> <p>16 it's something that a listener is</p> <p>17 hearing at the outset. And I have done</p> <p>18 quite a bit of reading in music</p> <p>19 cognition and my readings in that</p> <p>20 discipline have supported that</p> <p>21 conclusion as well.</p> <p>22 Q What is music cognition?</p> <p>23 A It's the study of how music</p> <p>24 is perceived and how mental structures</p> <p>25 conceptualize musical sounds.</p>
<p style="text-align: right;">Page 159</p> <p>1 STEWART</p> <p>2 T-O-N-E-M-E, in analysis of blues.</p> <p>3 Q Looking at -- going back to</p> <p>4 your report on Page 4.</p> <p>5 A Yes.</p> <p>6 Q Looking at Example 1.</p> <p>7 A Yes.</p> <p>8 Q You label that example as the</p> <p>9 basic baselines in Let's Get It On and</p> <p>10 Thinking Out Loud.</p> <p>11 Do you see that?</p> <p>12 A Yes.</p> <p>13 Q And you say in your report</p> <p>14 that --</p> <p>15 MS. RICE: I'm sorry, which</p> <p>16 report is it?</p> <p>17 MS. FARKAS: His December</p> <p>18 report.</p> <p>19 Q You state in your report on</p> <p>20 Page 5 that, quote, this is the only</p> <p>21 base part heard for the first 24</p> <p>22 seconds. Because it is in the</p> <p>23 beginning of the song it makes a</p> <p>24 lasting first impression, closed quote.</p> <p>25 A Yes, I see that.</p>	<p style="text-align: right;">Page 161</p> <p>1 STEWART</p> <p>2 Q And how is -- was there a</p> <p>3 particular methodology that you</p> <p>4 employed in determining that the</p> <p>5 opening baseline of the only -- excuse</p> <p>6 me, the opening base part of Thinking</p> <p>7 Out Loud creates a lasting first</p> <p>8 impression?</p> <p>9 A I'm not sure I understand the</p> <p>10 question.</p> <p>11 Q Well, what did you do to</p> <p>12 determine that it creates a lasting</p> <p>13 first impression?</p> <p>14 A It certainly had that effect</p> <p>15 on me. I remember that -- hearing that</p> <p>16 as the base part of the song.</p> <p>17 Q And did you conduct any</p> <p>18 surveys to determine whether that base</p> <p>19 part had a lasting first impression on</p> <p>20 anyone other than you?</p> <p>21 A Again, I mean based on my</p> <p>22 research and studying studies in my --</p> <p>23 as a scholar, it's supported by</p> <p>24 everything that I've done in that work,</p> <p>25 as well. That first impressions are</p>

<p style="text-align: right;">Page 170</p> <p>1 STEWART</p> <p>2 online, was there any other type of</p> <p>3 survey evidence that you did to</p> <p>4 conclude that most listeners familiar</p> <p>5 with Let's Get It On would undoubtedly</p> <p>6 recognize the similarity?</p> <p>7 A Well, everybody that I played</p> <p>8 it for recognized it right away. I</p> <p>9 played it for colleagues at work. I</p> <p>10 mean, we can test that. Have I</p> <p>11 conducted a survey involving hundreds</p> <p>12 of thousands of people where I play the</p> <p>13 two songs and ask them if they hear</p> <p>14 that they're similar? No, I haven't</p> <p>15 done that.</p> <p>16 To my knowledge this just</p> <p>17 seems so obvious that it seems</p> <p>18 ridiculous to keep discussing it.</p> <p>19 That's my opinion.</p> <p>20 Q Are you claiming to be an</p> <p>21 expert on what the lay listener would</p> <p>22 hear?</p> <p>23 A It's not really my job -- I</p> <p>24 mean, I'm offering an opinion here, but</p> <p>25 in copyright law I guess that would be</p>	<p style="text-align: right;">Page 172</p> <p>1 STEWART</p> <p>2 A Because according to</p> <p>3 Mr. Sheeran there is no base guitar in</p> <p>4 this song.</p> <p>5 Q Well, what do you think</p> <p>6 begins at approximately 24 seconds into</p> <p>7 Thinking Out Loud?</p> <p>8 A The drums come in and</p> <p>9 keyboards.</p> <p>10 Q And there's no guitar</p> <p>11 playing, there's no base guitar</p> <p>12 playing?</p> <p>13 A Not according to Mr. Sheeran.</p> <p>14 Q Well, I'm not asking</p> <p>15 according to Mr. Sheeran. I'm asking</p> <p>16 according to your analysis of the song.</p> <p>17 You listened to the two songs and you</p> <p>18 conducted an analysis of the two songs.</p> <p>19 Are you amending -- do you want to</p> <p>20 amend your report?</p> <p>21 A Where do I say that the base</p> <p>22 guitar comes in?</p> <p>23 Q The part where you --</p> <p>24 A Oh, yes, here. Well, no,</p> <p>25 here's a reference to a base guitarist</p>
<p style="text-align: right;">Page 171</p> <p>1 STEWART</p> <p>2 considered the intrinsic test. As the</p> <p>3 expert I'm supposed to be doing the</p> <p>4 extrinsic test. So my job is to look</p> <p>5 at the musical expression and compare</p> <p>6 it. I'm opining that average listeners</p> <p>7 too would also hear these similarities.</p> <p>8 Q So that is part of your</p> <p>9 opinion here?</p> <p>10 A That's part of my opinion,</p> <p>11 but ultimately -- at the end of the day</p> <p>12 that's not what I'm hired to opine on.</p> <p>13 That would be the job of the jury.</p> <p>14 Q Do you agree that the base</p> <p>15 guitar part does not begin until</p> <p>16 approximately 24 seconds into Thinking</p> <p>17 Out Loud?</p> <p>18 A I would not agree with that.</p> <p>19 Q I'm asking about the base</p> <p>20 guitar part, not the guitar part.</p> <p>21 A Yes. I understood the</p> <p>22 question.</p> <p>23 I don't agree with that.</p> <p>24 Q Why don't you agree with</p> <p>25 that?</p>	<p style="text-align: right;">Page 173</p> <p>1 STEWART</p> <p>2 the could be heard and seen in a live</p> <p>3 performance.</p> <p>4 Q So I'm going to play for you</p> <p>5 the commercially released version of</p> <p>6 Thinking Out Loud. And I'm going to</p> <p>7 say now at -- well, maybe you'll say</p> <p>8 now at the 24 second mark. Actually,</p> <p>9 no. I'm going to play it for you and</p> <p>10 if you can let us know when you -- if</p> <p>11 and when you hear a base guitar begin.</p> <p>12 (Whereupon, the song is being played.)</p> <p>13 Q That was about the first 51</p> <p>14 seconds of the songs. Is it your</p> <p>15 testimony that you haven't heard a base</p> <p>16 guitar come into the song?</p> <p>17 A No, I haven't.</p> <p>18 Q What are you hearing after</p> <p>19 the first 24 seconds?</p> <p>20 A I told you before I'm hearing</p> <p>21 keyboard and drums or drum sequence or</p> <p>22 drum machine.</p> <p>23 Q And you're not hearing any</p> <p>24 base guitar or guitar?</p> <p>25 A Guitar is present from the</p>

<p style="text-align: right;">Page 174</p> <p>1 STEWART</p> <p>2 beginning.</p> <p>3 Q And is the -- in -- your</p> <p>4 opinion is that guitar continues after</p> <p>5 24 seconds?</p> <p>6 A Yes. As I stated before,</p> <p>7 Mr. Sheeran was very clear that there</p> <p>8 is no base guitar on the entire track.</p> <p>9 Q But I'm asking about your</p> <p>10 testimony and your analysis of the two</p> <p>11 songs. And your opinion about</p> <p>12 Mr. Sheeran's testimony -- you didn't</p> <p>13 hear Mr. Sheeran's testimony until</p> <p>14 after you rendered your report,</p> <p>15 correct?</p> <p>16 A That's correct.</p> <p>17 Q Now, in Example 1 on Page 4,</p> <p>18 you've only transcribed a portion of</p> <p>19 the opening guitar part, correct?</p> <p>20 A I'm sorry, where?</p> <p>21 Q Your Example 1 on Page 4.</p> <p>22 A That's correct.</p> <p>23 Q Just the lowest notes?</p> <p>24 A That's correct.</p> <p>25 Q And nowhere in your report do</p>	<p style="text-align: right;">Page 176</p> <p>1 STEWART</p> <p>2 A The lowest guitar note in the</p> <p>3 opening 24 seconds is the baseline,</p> <p>4 that's what you're asking me?</p> <p>5 Q Yes.</p> <p>6 A Yes.</p> <p>7 Q And does the baseline change</p> <p>8 throughout Thinking Out Loud?</p> <p>9 A That's an interesting</p> <p>10 question. I mean, there is an</p> <p>11 additional base part that is added but</p> <p>12 this base part continues on. And,</p> <p>13 again, according to Mr. Sheeran, the</p> <p>14 composition as he did it on his demo is</p> <p>15 the composition. And that does not</p> <p>16 contain any other base part except for</p> <p>17 this part that's notated here.</p> <p>18 Q So now is your testimony that</p> <p>19 the demo is the composition?</p> <p>20 A No, I'm saying as regards to</p> <p>21 base part he's quite clear that --</p> <p>22 that -- okay. Let me revise that.</p> <p>23 He's very clear that what</p> <p>24 he's playing on the demo is the</p> <p>25 composition and on that you hear only</p>
<p style="text-align: right;">Page 175</p> <p>1 STEWART</p> <p>2 you transcribe the full guitar part</p> <p>3 that you hear in the first 24 seconds,</p> <p>4 correct?</p> <p>5 A That's correct.</p> <p>6 Q So your testimony is that the</p> <p>7 only guitar part that you're hearing in</p> <p>8 Thinking Out Loud is a guitar part not</p> <p>9 a base guitar, correct?</p> <p>10 A Well, they're two different</p> <p>11 instruments, base guitar and guitar.</p> <p>12 Q I understand.</p> <p>13 A So you're asking me do I hear</p> <p>14 a base guitar in Thinking Out Loud?</p> <p>15 Q Yes.</p> <p>16 A I do not.</p> <p>17 Q And you only hear guitar?</p> <p>18 A That's right.</p> <p>19 Q You hear a guitar throughout</p> <p>20 Thinking Out Loud, correct?</p> <p>21 A That's correct.</p> <p>22 Q Is it your testimony that the</p> <p>23 lowest guitar notes in the opening 24</p> <p>24 seconds of Thinking Out Loud is the</p> <p>25 baseline?</p>	<p style="text-align: right;">Page 177</p> <p>1 STEWART</p> <p>2 this base part. That does not mean</p> <p>3 that the base part that's added on in</p> <p>4 the studio version is not part of the</p> <p>5 composition, too, as it evolved; it is.</p> <p>6 Q Are the lowest notes of the</p> <p>7 keyboard in the first 24 seconds of --</p> <p>8 sorry, at 24 seconds in on Thinking Out</p> <p>9 Loud, are the lowest notes of the</p> <p>10 keyboard considered the baseline?</p> <p>11 A They're part of it.</p> <p>12 Q What's the baseline of</p> <p>13 Thinking Out Loud?</p> <p>14 A It's this in Example 1.</p> <p>15 Q You think that continues</p> <p>16 throughout the entire song?</p> <p>17 A Yes.</p> <p>18 Q Without change?</p> <p>19 A Well, there may be minor</p> <p>20 embellishments and of course it changes</p> <p>21 during the bridge or the pre-chorus or</p> <p>22 whatever you call it. If I might</p> <p>23 add -- or you don't like me to add, so</p> <p>24 I won't.</p> <p>25 MR. FRANK: Wait for a</p>

<p style="text-align: right;">Page 190</p> <p>1 STEWART</p> <p>2 forest.</p> <p>3 Q Well, I guess you and Dr.</p> <p>4 Ferrara are going to have to disagree</p> <p>5 on that one.</p> <p>6 Can you answer my question,</p> <p>7 please?</p> <p>8 A Well, actually we agree</p> <p>9 because he did the analysis correctly</p> <p>10 in the beginning. And now he's trying</p> <p>11 to find something to be rather pedantic</p> <p>12 about frankly and show that there's a</p> <p>13 difference where there really is not a</p> <p>14 substantial difference.</p> <p>15 Q Okay.</p> <p>16 Well, putting your attacks on</p> <p>17 Dr. Ferrara's integrity aside, can you</p> <p>18 answer my question please?</p> <p>19 A And that question is what?</p> <p>20 Q How many notes are in bar two</p> <p>21 of Let's Get It On?</p> <p>22 A How many notes are in bar two</p> <p>23 of Let's Get It On?</p> <p>24 Q In Musical Example 2.</p> <p>25 A One, two, three, four --</p>	<p style="text-align: right;">Page 192</p> <p>1 STEWART</p> <p>2 I could interpose. Your exact</p> <p>3 question was whether the base --</p> <p>4 guitar came in, you didn't use the</p> <p>5 words baseline. You used base</p> <p>6 guitar.</p> <p>7 Q I understand.</p> <p>8 A That's what I was listening</p> <p>9 for because you asked for me to</p> <p>10 indicate when the base guitar came in.</p> <p>11 Q Okay.</p> <p>12 A And it doesn't.</p> <p>13 Q And what does come in?</p> <p>14 A There is an additional base</p> <p>15 part the joins the base part in the</p> <p>16 guitar.</p> <p>17 Q And at the time that you</p> <p>18 wrote your December 2017 report, did</p> <p>19 you have an understanding or a belief</p> <p>20 as to what instrument was playing that</p> <p>21 baseline starting at 25 seconds into</p> <p>22 Thinking Out Loud?</p> <p>23 A I wasn't sure.</p> <p>24 Q Do you have a sense now as to</p> <p>25 what instrument was playing that</p>
<p style="text-align: right;">Page 191</p> <p>1 STEWART</p> <p>2 five.</p> <p>3 Q And how many are in bar four</p> <p>4 of Let's Get It On in Ferrara Musical</p> <p>5 Example 2?</p> <p>6 A Seven.</p> <p>7 MS. FARKAS: Let's take a</p> <p>8 quick break.</p> <p>9 VIDEOGRAPHER: The time is</p> <p>10 2:56. We're off the record.</p> <p>11 (Whereupon, a brief recess</p> <p>12 was taken.)</p> <p>13 VIDEOGRAPHER: The time is</p> <p>14 3:08 p.m. We're on the record.</p> <p>15 Q We were talking earlier about</p> <p>16 what you consider to be the baseline of</p> <p>17 Thinking Out Loud. And I had played</p> <p>18 for you about 51 seconds of Thinking</p> <p>19 Out Loud and asked you about whether</p> <p>20 the baseline changed in Thinking Out</p> <p>21 Loud. And I'd like to focus on around</p> <p>22 24, 25 seconds into Thinking Out Loud.</p> <p>23 Am I correct that a new baseline comes</p> <p>24 in at that point in Thinking Out Loud?</p> <p>25 MR. FRANK: If I could -- if</p>	<p style="text-align: right;">Page 193</p> <p>1 STEWART</p> <p>2 baseline?</p> <p>3 A I would be perfectly happy to</p> <p>4 accept Mr. Sheeran's statement that</p> <p>5 it's in the keyboard. I don't know why</p> <p>6 it would be -- he wouldn't have any</p> <p>7 reason to fabricate, he seems like a</p> <p>8 very honest guy.</p> <p>9 Q Yes, he does.</p> <p>10 And I believe he testified</p> <p>11 that it was a programmed keyboard that</p> <p>12 played the baseline starting at 25</p> <p>13 seconds, is that --</p> <p>14 A I'm not sure he said that, I</p> <p>15 would have to hear it again. But I</p> <p>16 think he talked about the drums being</p> <p>17 programmed, I'm not sure he said that</p> <p>18 the base was.</p> <p>19 Q Irrespective of what it was,</p> <p>20 can we at least agree on a lingo going</p> <p>21 forward that we're going to call it the</p> <p>22 new baseline?</p> <p>23 A The additional baseline I'll</p> <p>24 agree to.</p> <p>25 Q Call it the different</p>

<p style="text-align: right;">Page 194</p> <p>1 STEWART</p> <p>2 baseline.</p> <p>3 A How about if we compromise,</p> <p>4 the new additional baseline.</p> <p>5 Q Sure. We'll all reserve our</p> <p>6 rights.</p> <p>7 What are we calling it?</p> <p>8 A What did you call it a moment</p> <p>9 ago, the --</p> <p>10 Q The new baseline.</p> <p>11 A No, but you said another</p> <p>12 term.</p> <p>13 Q Well, look, let's just agree</p> <p>14 that the baseline that begins at 25</p> <p>15 seconds into Thinking Out Loud is</p> <p>16 different from the baseline that is</p> <p>17 heard in the first 24 seconds of the</p> <p>18 song. Is that -- can we agree on that?</p> <p>19 A It joins in along with the</p> <p>20 guitar baseline.</p> <p>21 Q So why don't we call it</p> <p>22 Baseline B, this way we're not putting</p> <p>23 any adjective on it?</p> <p>24 A Sure.</p> <p>25 Q So the baseline that begins</p>	<p style="text-align: right;">Page 196</p> <p>1 STEWART</p> <p>2 record, Larry got disconnected so</p> <p>3 I'm going to call him back.</p> <p>4 MS. FARKAS: Well, before you</p> <p>5 mute Larry, have you heard</p> <p>6 anything since we came back from</p> <p>7 break? Larry?</p> <p>8 MR. FERRARA: Yes.</p> <p>9 MS. FARKAS: I'm going to</p> <p>10 summarize and I'm sure I will get</p> <p>11 swatted if I do this incorrectly.</p> <p>12 But there is an agreement within</p> <p>13 my questioning and the testimony</p> <p>14 that there is a new baseline that</p> <p>15 begins at about 25 seconds into</p> <p>16 Thinking Out Loud, that that new</p> <p>17 baseline -- that Dr. Stewart was</p> <p>18 not certain what instrument was</p> <p>19 playing that baseline when he did</p> <p>20 his report, but based on</p> <p>21 Mr. Sheeran's testimony is willing</p> <p>22 to accept that it is some form of</p> <p>23 keyboard programmed or not that is</p> <p>24 emitting the sounds of the new</p> <p>25 baseline. And for purposes of</p>
<p style="text-align: right;">Page 195</p> <p>1 STEWART</p> <p>2 at roughly 25 seconds into Thinking Out</p> <p>3 Loud we will now refer to as Baseline</p> <p>4 B.</p> <p>5 Okay?</p> <p>6 A And it's nice that it's a B</p> <p>7 for base.</p> <p>8 Q I try. Sometimes</p> <p>9 unintentionally, but I try.</p> <p>10 A We should have B1 and B2.</p> <p>11 Q No, no, just stop. This</p> <p>12 isn't cutting into my time.</p> <p>13 So do you agree that Baseline</p> <p>14 B in Thinking Out Loud starts at about</p> <p>15 25 seconds in and continues through the</p> <p>16 duration of the song?</p> <p>17 A I think that that additional</p> <p>18 base part does continue through most of</p> <p>19 the rest of the song.</p> <p>20 Q And am I correct that you do</p> <p>21 not provide any transcription of</p> <p>22 Baseline B in your reports; is that</p> <p>23 correct?</p> <p>24 A I believe I don't.</p> <p>25 MR. GOLDSMITH: For the</p>	<p style="text-align: right;">Page 197</p> <p>1 STEWART</p> <p>2 going forward we are calling the</p> <p>3 baseline that begins at about 25</p> <p>4 seconds in as Baseline B.</p> <p>5 MR. FERRARA: Thank you.</p> <p>6 I'll mute now. Thank you.</p> <p>7 A Just one minor correction.</p> <p>8 Remember, we didn't agree to call it</p> <p>9 the new baseline we agreed to call it</p> <p>10 the new additional baseline.</p> <p>11 Q Well, we agreed to call it</p> <p>12 Baseline B.</p> <p>13 A Okay.</p> <p>14 Q To avoid all of that.</p> <p>15 A But I never agreed to the new</p> <p>16 baseline --</p> <p>17 Q Fair enough.</p> <p>18 A -- categorization.</p> <p>19 Q It's very old.</p> <p>20 A Yeah. Okay.</p> <p>21 Q That was sarcasm.</p> <p>22 A It's too bad Dr. Ferrara</p> <p>23 missed all of that, it was exciting.</p> <p>24 MS. RICE: He would have</p> <p>25 laughed.</p>

<p style="text-align: right;">Page 242</p> <p>1 STEWART</p> <p>2 differently.</p> <p>3 Q Looking at Let's Get It On in</p> <p>4 beat four of bar one there's a kick or</p> <p>5 base drum in the Let's Get It On RP but</p> <p>6 there's no corresponding kick drum in</p> <p>7 Thinking Out Loud, correct?</p> <p>8 A On beat four?</p> <p>9 Q Yes.</p> <p>10 A That's correct.</p> <p>11 Q And that's shown both in your</p> <p>12 transcription and in the chart that's</p> <p>13 below it, correct?</p> <p>14 A Correct.</p> <p>15 Q And on beat four in bar two</p> <p>16 of Let's Get It On there is a kick or</p> <p>17 base drum but there's no kick or base</p> <p>18 drum that corresponds in Thinking Out</p> <p>19 Loud, correct?</p> <p>20 A Correct.</p> <p>21 Q And that's notated both in</p> <p>22 your transcriptions and in the chart</p> <p>23 below, correct?</p> <p>24 A Yes.</p> <p>25 Q Now, as illustrated in your</p>	<p style="text-align: right;">Page 244</p> <p>1 STEWART</p> <p>2 A Yes.</p> <p>3 Q And, in fact, while you've</p> <p>4 transcribed all eighth notes in the</p> <p>5 high hat for Thinking Out Loud, the</p> <p>6 transcription of the high hat in Let's</p> <p>7 Get It On starts with a quarter note,</p> <p>8 right?</p> <p>9 A I'm scared go back to this</p> <p>10 because I don't want to get you angry</p> <p>11 again.</p> <p>12 Q This is the same opening</p> <p>13 thing that you think happens this one</p> <p>14 time?</p> <p>15 A Yes. And we're talking about</p> <p>16 the beginning -- so it's -- I'm sorry,</p> <p>17 should I speak or do you want to speak?</p> <p>18 Q I'll speak.</p> <p>19 A Yes.</p> <p>20 Q You agree that there's a</p> <p>21 difference but it's a difference for</p> <p>22 the same reasons that you previously</p> <p>23 testified about that --</p> <p>24 A Yes.</p> <p>25 Q -- it's unique to the opening</p>
<p style="text-align: right;">Page 243</p> <p>1 STEWART</p> <p>2 Example 2, the similarity between the</p> <p>3 high hat patterns in the two songs are</p> <p>4 repeating eighth notes; is that</p> <p>5 correct?</p> <p>6 A On the closed high hat, yes.</p> <p>7 Q And do you agree that</p> <p>8 repeatings eighth notes on the closed</p> <p>9 high hat symbols is common before Let's</p> <p>10 Get It On?</p> <p>11 A Well, this is something that</p> <p>12 happens in all of these depositions,</p> <p>13 you want to separate each element out</p> <p>14 and talk about whether it ever happens</p> <p>15 in other songs. And I'm happy to do</p> <p>16 that, I'll oblige you the best I can.</p> <p>17 Yes, a study pattern eighth</p> <p>18 notes in the high hat is heard in many</p> <p>19 songs with other varying drum parts</p> <p>20 underneath it.</p> <p>21 Q Would you agree it's common</p> <p>22 place in numerous genres of music?</p> <p>23 A These steady eighth notes on</p> <p>24 the high hat?</p> <p>25 Q Yes.</p>	<p style="text-align: right;">Page 245</p> <p>1 STEWART</p> <p>2 of Let's Get It On?</p> <p>3 A As I recall, um-hum. And,</p> <p>4 again, the drum part in Thinking Out</p> <p>5 Loud is coming partway into the song.</p> <p>6 Q But it's the beginning of the</p> <p>7 drum section, correct?</p> <p>8 A It is. It is.</p> <p>9 Q Focusing on the similarity</p> <p>10 that you allege exists between the</p> <p>11 snare drum in both songs. The</p> <p>12 similarity is that both songs play on</p> <p>13 beats two and four, correct?</p> <p>14 A Yes.</p> <p>15 Q And beats two and four are</p> <p>16 sometimes referred to as backbeats,</p> <p>17 correct?</p> <p>18 A Yes.</p> <p>19 Q Do you agree that a snare</p> <p>20 drum playing on the backbeat was common</p> <p>21 prior to Let's Get It On?</p> <p>22 A Yes.</p> <p>23 Q Do you agree that the base</p> <p>24 drum patterns in the two songs are not</p> <p>25 identical?</p>

<p style="text-align: right;">Page 246</p> <p>1 STEWART</p> <p>2 A They're extremely similar but</p> <p>3 not identical.</p> <p>4 Q Is it your opinion that the</p> <p>5 drum pattern in Let's Get It On is</p> <p>6 original to Let's Get It On?</p> <p>7 A Original in what sense?</p> <p>8 Q Do you believe that the --</p> <p>9 whoever created the drum pattern in</p> <p>10 Let's Get It On was the first person to</p> <p>11 come up with that drum pattern?</p> <p>12 A In that sense, probably not.</p> <p>13 In terms of a more legal definition of</p> <p>14 original, meaning not copied, it could</p> <p>15 very well be original.</p> <p>16 Q Did the drum pattern in Let's</p> <p>17 Get It On exist in songs prior to Let's</p> <p>18 Get It On?</p> <p>19 A Most likely, yes, but that</p> <p>20 doesn't mean that the drummer</p> <p>21 necessarily copied it from someone</p> <p>22 else.</p> <p>23 Q I'm not suggesting that Let's</p> <p>24 Get It On infringes or copies any other</p> <p>25 work. I'm simply asking whether you</p>	<p style="text-align: right;">Page 248</p> <p>1 STEWART</p> <p>2 A Yes. And I'm quite familiar</p> <p>3 with those works.</p> <p>4 Q You had mentioned James Brown</p> <p>5 before.</p> <p>6 And do you agree that those</p> <p>7 drum patterns are very similar to the</p> <p>8 drum pattern in Let's Get It On?</p> <p>9 A No.</p> <p>10 Q And how are they different?</p> <p>11 A First of all, the -- there is</p> <p>12 no high hat on -- let's look at his</p> <p>13 example. Which visual example is that?</p> <p>14 I mean, I can kind of do this from</p> <p>15 memory because I'm so familiar with</p> <p>16 these tracks, but it might be better to</p> <p>17 actually look at it.</p> <p>18 MR. FRANK: For the record</p> <p>19 which one are you looking at?</p> <p>20 Which --</p> <p>21 THE WITNESS: I'm looking</p> <p>22 at -- I found it right away,</p> <p>23 believe it or not, Visual Exhibit</p> <p>24 I. And I actually have this book,</p> <p>25 too, by Jim Payne.</p>
<p style="text-align: right;">Page 247</p> <p>1 STEWART</p> <p>2 believe that the drum pattern that</p> <p>3 exists in Let's Get It On existed in</p> <p>4 songs prior to Let's Get It On?</p> <p>5 A It could have and this</p> <p>6 drummer could have invented it</p> <p>7 independently, but it could have</p> <p>8 existed in other songs.</p> <p>9 Q Well, in Dr. Ferrara's report</p> <p>10 he identifies several drum method books</p> <p>11 that show drum patterns very similar,</p> <p>12 if not identical, to the drum pattern</p> <p>13 in Let's Get It On.</p> <p>14 Have you looked at those?</p> <p>15 A I've looked at the examples</p> <p>16 he provided.</p> <p>17 Q And two of those drum</p> <p>18 patterns are from James Brown's 1965</p> <p>19 Papa's Got a Brand New Bag and 1964 Out</p> <p>20 Of Sight.</p> <p>21 Do you recall those two</p> <p>22 examples?</p> <p>23 A Yes, I do.</p> <p>24 Q And those obviously predate</p> <p>25 Let's Get It On, correct?</p>	<p style="text-align: right;">Page 249</p> <p>1 STEWART</p> <p>2 First of all, let's start</p> <p>3 with Brand New Bag. There's some</p> <p>4 really important differences here.</p> <p>5 The high hat is used as an open</p> <p>6 sound on the and of one and on the</p> <p>7 and of three. So you have</p> <p>8 (whereupon, the witness is making</p> <p>9 sounds), which is very different</p> <p>10 than this (whereupon, the witness</p> <p>11 is making sounds), so it's really</p> <p>12 significantly different. And then</p> <p>13 the backbeat is a click -- it's a</p> <p>14 rimshot, it's not a snare drum hit</p> <p>15 so that sounds completely</p> <p>16 different.</p> <p>17 And should we turn to Out Of</p> <p>18 Sight?</p> <p>19 Q Why do you think it sounds</p> <p>20 completely different?</p> <p>21 A Because it does. Do you hear</p> <p>22 the difference between (whereupon, the</p> <p>23 witness is making sounds) and the</p> <p>24 difference between a big sonic boom --</p> <p>25 well boom is not the right -- I'm not</p>

<p style="text-align: right;">Page 250</p> <p>1 STEWART</p> <p>2 sure how -- how would I represent the</p> <p>3 sound of a snare drum? It's very</p> <p>4 different than the sort of clean and</p> <p>5 precise and less loud sound on the</p> <p>6 click.</p> <p>7 Q But looking at Papa's Got a</p> <p>8 Brand New Bag, both songs have high</p> <p>9 hats played on eighth notes, correct?</p> <p>10 A They do.</p> <p>11 Q So you're distinguishing</p> <p>12 between opened and closed high hat, is</p> <p>13 that your distinction there?</p> <p>14 A Well, because it has a</p> <p>15 incredibly different sound. And so in</p> <p>16 a different -- you know, we've been</p> <p>17 talking a lot about duration. So the</p> <p>18 duration of the high hat hit on the and</p> <p>19 of one and on the and of three is much</p> <p>20 longer because the high is open. When</p> <p>21 the high hat is closed it's a very</p> <p>22 short and crisp note.</p> <p>23 Q Don't you have an open circle</p> <p>24 on Let's Get It On, as well?</p> <p>25 A On one note, yes. And it's</p>	<p style="text-align: right;">Page 252</p> <p>1 STEWART</p> <p>2 microsecond. And then the second</p> <p>3 (whereupon, the witness is making</p> <p>4 sounds), lasts for the whole half beat.</p> <p>5 So the durations are completely</p> <p>6 different.</p> <p>7 Q So it's not an eighth note?</p> <p>8 A Well, this is the way drum --</p> <p>9 I mean, again, we're back to the</p> <p>10 conventions of notation. If you wrote</p> <p>11 it in another way it would be really</p> <p>12 hard to visualize what the rhythm is</p> <p>13 and it would be next to impossible for</p> <p>14 a drummer to read it. Because a</p> <p>15 drummer just wants to see. Okay. I'm</p> <p>16 hitting the high hat on each eighth</p> <p>17 note.</p> <p>18 Q Yeah, I mean --</p> <p>19 A And then the other</p> <p>20 information that he's being given here</p> <p>21 is that that second note is sustained</p> <p>22 by opening the high hat with his foot.</p> <p>23 Q But it's a bar of music,</p> <p>24 right, that's being shown here?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 251</p> <p>1 STEWART</p> <p>2 not clear that that's happening</p> <p>3 throughout the whole song.</p> <p>4 Q And -- but that doesn't</p> <p>5 change --</p> <p>6 A And it's not clear that --</p> <p>7 whether it's happening in Thinking Out</p> <p>8 Loud, too. It's really hard to hear on</p> <p>9 the track, I listened very closely.</p> <p>10 Q Okay.</p> <p>11 But while the open or closed</p> <p>12 high hat might change the timbre or the</p> <p>13 sound, it's not changing the rhythm,</p> <p>14 correct?</p> <p>15 A It's changing -- you put a</p> <p>16 lot of emphasis before on duration.</p> <p>17 It's changing the duration drastically.</p> <p>18 Q It's an eighth note, correct?</p> <p>19 A Well, this is a great example</p> <p>20 of how something that's represented as</p> <p>21 an eighth note in both of these first</p> <p>22 two notes on a high hat actually have</p> <p>23 completely different durations. One --</p> <p>24 the first one is a (whereupon, the</p> <p>25 witness is making sounds), it's like a</p>	<p style="text-align: right;">Page 253</p> <p>1 STEWART</p> <p>2 Q So there's only so many</p> <p>3 eighth notes that fit in a bar of music</p> <p>4 when you have 4/4 time, right?</p> <p>5 A It would be eight to the bar.</p> <p>6 Q So an eighth note is an</p> <p>7 eighth note is an eighth note in terms</p> <p>8 of rhythmic duration, correct?</p> <p>9 A No. I mean, that sounds</p> <p>10 weird for me to say that, I recognize</p> <p>11 it. But the fact is that this is</p> <p>12 indicating two very different lengths</p> <p>13 of notes. And this is what's</p> <p>14 incredible about percussion notation is</p> <p>15 that durations become even less</p> <p>16 significant in this situation than they</p> <p>17 are in the other situation we're</p> <p>18 talking about with the base. Because</p> <p>19 drummers like to just see where they</p> <p>20 hit the drum. That's what they want to</p> <p>21 be able to see. So is this first base</p> <p>22 drum kick drum hit in eighth note or</p> <p>23 does he choke it off halfway through</p> <p>24 the beat or is it allowed to ring out.</p> <p>25 Q Okay.</p>

<p style="text-align: right;">Page 254</p> <p>1 STEWART</p> <p>2 A You know, so I'm not trying</p> <p>3 to be difficult here, but this is</p> <p>4 really important, I think, in terms of</p> <p>5 understanding this notation.</p> <p>6 Q And looking at the example of</p> <p>7 Out Of Sight.</p> <p>8 A Yes.</p> <p>9 Q There's high hat on the</p> <p>10 eighth notes, correct?</p> <p>11 A No. There is no high hat at</p> <p>12 all.</p> <p>13 Q I stand corrected.</p> <p>14 But the ride symbol pattern</p> <p>15 is identical to the repeating drum</p> <p>16 patterns in Thinking Out Loud, no?</p> <p>17 A It's a steady stream of</p> <p>18 eighth notes, yes. But the ride symbol</p> <p>19 has a longer sustained than the closed</p> <p>20 high hat, too. So this is going to be</p> <p>21 (whereupon, the witness is making</p> <p>22 sounds) instead of (whereupon, the</p> <p>23 witness is making sounds).</p> <p>24 Sorry. It's not possible to</p> <p>25 transcribe that. But that -- you know,</p>	<p style="text-align: right;">Page 256</p> <p>1 STEWART</p> <p>2 A No, I think -- I thought you</p> <p>3 might mention that. And it's a</p> <p>4 question of genre here, too. You know,</p> <p>5 this is a different genre being funk</p> <p>6 and sole rather than a rock ballad.</p> <p>7 But that's a valid point you make.</p> <p>8 Q Awesome.</p> <p>9 Turning to Exhibit J to the</p> <p>10 Ferrara report.</p> <p>11 A There are other differences</p> <p>12 in these, two, but I guess you're done</p> <p>13 with this, right?</p> <p>14 Q For now.</p> <p>15 A So turn to what?</p> <p>16 Q Turn to Exhibit J.</p> <p>17 MR. FRANK: That would be one</p> <p>18 more over.</p> <p>19 A Its significant differences.</p> <p>20 Okay.</p> <p>21 Q Let me try and shortcut this</p> <p>22 given the time.</p> <p>23 You're not -- putting aside</p> <p>24 whether you believe there are</p> <p>25 differences between the different</p>
<p style="text-align: right;">Page 255</p> <p>1 STEWART</p> <p>2 her difficulty in writing that out is</p> <p>3 sort of like our difficulty in notating</p> <p>4 it in music. You know.</p> <p>5 Q So you think that unless the</p> <p>6 exact same percussion instrument is</p> <p>7 playing it with the exact same way for</p> <p>8 the exact same duration there's no</p> <p>9 similarity between the rhythmic</p> <p>10 patterns?</p> <p>11 A Well, if you heard these you</p> <p>12 would hear they sound very different.</p> <p>13 And they're also at very different</p> <p>14 tempos. Look at the tempo here, it's</p> <p>15 129 and 130. So these are completely</p> <p>16 different types of grooves. These are</p> <p>17 faster grooves. That -- we're talking</p> <p>18 about rock ballads in terms of Let's</p> <p>19 Get It On and Thinking Out Loud.</p> <p>20 Q So do you think that if</p> <p>21 Thinking Out Loud was a faster tempo</p> <p>22 than Let's Get It On you wouldn't have</p> <p>23 opined that the two songs are</p> <p>24 substantially similar as you claim you</p> <p>25 have done?</p>	<p style="text-align: right;">Page 257</p> <p>1 STEWART</p> <p>2 examples we're giving here, we're not</p> <p>3 going to agree on that today. But</p> <p>4 you're not contending that's anyone can</p> <p>5 own the rhythmic pattern that exists in</p> <p>6 Let's Get It On, are you?</p> <p>7 MR. FRANK: Objection.</p> <p>8 Predicate. Calls for a legal</p> <p>9 conclusion.</p> <p>10 Go ahead.</p> <p>11 A Well, again, I'm a</p> <p>12 musicologist not a lawyer.</p> <p>13 Q Well, let me --</p> <p>14 A And I have --</p> <p>15 Q Sorry. Let me help you out</p> <p>16 here then.</p> <p>17 If the drum pattern was the</p> <p>18 only thing that you believed was</p> <p>19 similar between the two songs and</p> <p>20 nothing else was similar, would you</p> <p>21 believe that Thinking Out Loud copied</p> <p>22 from Let's Get It On? Would you think</p> <p>23 that that was the only conclusion that</p> <p>24 someone could reach?</p> <p>25 A Yeah, that's a good question.</p>

<p style="text-align: right;">Page 258</p> <p>1 STEWART</p> <p>2 And basically one of the strategies in</p> <p>3 these cases that I've encountered in</p> <p>4 the past is the idea of separating all</p> <p>5 these elements and saying each element</p> <p>6 by itself is not protectable. So -- I</p> <p>7 know this is --</p> <p>8 Q I'm not --</p> <p>9 A I'll answer your question,</p> <p>10 but give me a -- I'm going to right</p> <p>11 now. Okay. Sorry.</p> <p>12 Q I'm going to hold you to it.</p> <p>13 A Yes.</p> <p>14 The answer is if that's all</p> <p>15 that were in common I don't think we'd</p> <p>16 be sitting here today if that were in</p> <p>17 isolation by itself.</p> <p>18 Q And that was the question?</p> <p>19 A Yes. I answered it.</p> <p>20 Q And so just to close the loop</p> <p>21 on it, you're not contending that the</p> <p>22 drum parts in and of themselves would</p> <p>23 be indicative of copying?</p> <p>24 A Only these elements in</p> <p>25 combination.</p>	<p style="text-align: right;">Page 260</p> <p>1 STEWART</p> <p>2 me to where that is?</p> <p>3 Q Sure. It's the second</p> <p>4 sentence where it says in my opinion on</p> <p>5 the top of Page 7 of your report.</p> <p>6 A Yes.</p> <p>7 Q In this sentence are you</p> <p>8 opining that the two songs are</p> <p>9 strikingly similar?</p> <p>10 A What do you mean by</p> <p>11 strikingly similar?</p> <p>12 Q Do you know what strikingly</p> <p>13 similar means?</p> <p>14 A I've heard the term in a</p> <p>15 legal context.</p> <p>16 Q And do you have an</p> <p>17 understanding of what it means?</p> <p>18 A Roughly, I guess.</p> <p>19 Q And what's your rough</p> <p>20 understanding?</p> <p>21 A Yeah, I guess that it would</p> <p>22 preclude a possibility of independent</p> <p>23 creation.</p> <p>24 Q So you are opining that the</p> <p>25 two songs are strikingly similar in</p>
<p style="text-align: right;">Page 259</p> <p>1 STEWART</p> <p>2 Q Right.</p> <p>3 So the drum parts in</p> <p>4 isolation would not be indicative of</p> <p>5 copying, correct?</p> <p>6 A Well, it could have probative</p> <p>7 value but it would not in and of itself</p> <p>8 be enough to have a definitive proof of</p> <p>9 copying, no.</p> <p>10 MS. FARKAS: Just off the</p> <p>11 record for a second.</p> <p>12 VIDEOGRAPHER: The time is</p> <p>13 4:18. We're off the record.</p> <p>14 (Whereupon, a brief recess</p> <p>15 was taken.)</p> <p>16 VIDEOGRAPHER: The time is</p> <p>17 4:39 p.m. We're back on the</p> <p>18 record. This is Video 5.</p> <p>19 Q On Page 7 of your</p> <p>20 December 2017 report, and I'm</p> <p>21 paraphrasing, you say in my opinion the</p> <p>22 distinctive combination of these</p> <p>23 baselines and drum parts can only</p> <p>24 indicate copying.</p> <p>25 A I'm sorry. Could you point</p>	<p style="text-align: right;">Page 261</p> <p>1 STEWART</p> <p>2 this sentence?</p> <p>3 A In terms of the combination</p> <p>4 of these elements, yes.</p> <p>5 Q And what led you to that</p> <p>6 conclusion other than the transcription</p> <p>7 of the two songs and the comparison of</p> <p>8 them that we've been talking about</p> <p>9 today, anything else?</p> <p>10 A The absence of prior art that</p> <p>11 has the degree of similarity that these</p> <p>12 two songs held.</p> <p>13 Q Can you tell us about whether</p> <p>14 you conducted any search for prior art</p> <p>15 in this case prior to -- let's start</p> <p>16 with prior to issuing your June 2015</p> <p>17 report?</p> <p>18 A Yes.</p> <p>19 Q And do you have a particular</p> <p>20 process that you use when searching for</p> <p>21 prior art?</p> <p>22 A Well, believe it or not one</p> <p>23 very useful method has been to ask</p> <p>24 musician friends of mine who have</p> <p>25 extensive knowledge of repertoires if</p>

<p style="text-align: right;">Page 274</p> <p>1 STEWART</p> <p>2 that there was no prior art?</p> <p>3 A Well, you know, you can't</p> <p>4 prove a negative.</p> <p>5 Q True.</p> <p>6 A So you could say that there</p> <p>7 are no green sheep in the world</p> <p>8 occurring naturally, but I can't prove</p> <p>9 it. So I think at some point based on</p> <p>10 your observation you just say, well, I</p> <p>11 think I've observed or digested enough</p> <p>12 data to draw this conclusion. And this</p> <p>13 is a scientific method, I mean, that is</p> <p>14 in universal use.</p> <p>15 Q Would you say that your</p> <p>16 knowledge of rock music is as deep as</p> <p>17 your knowledge of jazz music?</p> <p>18 A No.</p> <p>19 Q Would you say that your</p> <p>20 knowledge of popular music is the same</p> <p>21 and as deep as your knowledge of jazz</p> <p>22 music?</p> <p>23 A Once again, it's extensive</p> <p>24 and deep in many years of experience</p> <p>25 performing. But, no, jazz is my -- my</p>	<p style="text-align: right;">Page 276</p> <p>1 STEWART</p> <p>2 Q Do you believe that anyone</p> <p>3 can own a groove?</p> <p>4 MR. FRANK: Objection to</p> <p>5 form.</p> <p>6 Go ahead.</p> <p>7 A That's a great question.</p> <p>8 But, you know, there are a lot of</p> <p>9 different definitions of what a groove</p> <p>10 is.</p> <p>11 Q What's your definition of a</p> <p>12 groove?</p> <p>13 A Well, a lot of people use the</p> <p>14 term in the sort of more subjective way</p> <p>15 that it's like a feel. And when it's</p> <p>16 defined like that my answer would be</p> <p>17 categorically no, you cannot own a</p> <p>18 groove.</p> <p>19 Q Is beginning of vocal phrase</p> <p>20 after a rest something that's original</p> <p>21 to Let's Get It On?</p> <p>22 A No.</p> <p>23 Q You have discussed in your</p> <p>24 report certain similarities that you</p> <p>25 believe exist in the vocal melodies</p>
<p style="text-align: right;">Page 275</p> <p>1 STEWART</p> <p>2 passion. I mean, I've done so many</p> <p>3 rock gigs that I can't even begin to</p> <p>4 count them.</p> <p>5 Q When you were comparing the</p> <p>6 two songs, did you undertake any effort</p> <p>7 to exclude elements that are not</p> <p>8 original to Let's Get It On when</p> <p>9 comparing the two songs?</p> <p>10 A I think we covered that.</p> <p>11 Yeah, I didn't consider that</p> <p>12 these first three things we were</p> <p>13 talking about in my report; tempo, key,</p> <p>14 length, other performance elements,</p> <p>15 certain improvisational elements, so</p> <p>16 forth.</p> <p>17 Q Do you believe that the two</p> <p>18 songs as whole works are identical?</p> <p>19 A No.</p> <p>20 Q Do you believe that they're</p> <p>21 virtually identical?</p> <p>22 A No. The entire songs -- the</p> <p>23 songs in their entirety as entire</p> <p>24 works, no. The answer is no, which was</p> <p>25 what your question was.</p>	<p style="text-align: right;">Page 277</p> <p>1 STEWART</p> <p>2 that you've identified in your report.</p> <p>3 Are you aware of that?</p> <p>4 A Yes.</p> <p>5 Q Are you contending that any</p> <p>6 of those vocal melody similarities in</p> <p>7 and of themselves would be indicative</p> <p>8 of copying if no other similarities</p> <p>9 existed in the two songs?</p> <p>10 A Yes.</p> <p>11 Q Which ones?</p> <p>12 A All of the ones that I</p> <p>13 mentioned and maybe even some others.</p> <p>14 Q So looking at Example 3 in</p> <p>15 your report, are you contending that</p> <p>16 the similarities that you claim exist</p> <p>17 in Example 3, that if those were the</p> <p>18 only similarities that existed between</p> <p>19 the songs, would your conclusion be</p> <p>20 that the only explanation is that</p> <p>21 Thinking Out Loud copied from Let's Get</p> <p>22 It On?</p> <p>23 A No.</p> <p>24 Q What about Example 4? If</p> <p>25 that was the only similarity between</p>

<p style="text-align: right;">Page 278</p> <p>1 STEWART</p> <p>2 the two songs, would your conclusion be</p> <p>3 that the only explanation is copying?</p> <p>4 A No. You asked me if it could</p> <p>5 be indicative of copying and my answer</p> <p>6 is yes. But would it be the only --</p> <p>7 how did you just phrase it?</p> <p>8 Q Explanation.</p> <p>9 A The only explanation, my</p> <p>10 answer is no.</p> <p>11 Q Well, going back to the</p> <p>12 question about being indicative of</p> <p>13 copying. If that was -- if either</p> <p>14 Example 3 or Example 4 were the only</p> <p>15 similarities that someone brought to</p> <p>16 your attention, would you advise them</p> <p>17 to go forward with a claim?</p> <p>18 A Probably not because the</p> <p>19 litigation is so expensive and time</p> <p>20 consuming and stressful that I think</p> <p>21 you need to have a very strong case to</p> <p>22 make it actionable.</p> <p>23 Q And that would not be a</p> <p>24 strong case in your opinion?</p> <p>25 A I think that would not. That</p>	<p style="text-align: right;">Page 280</p> <p>1 STEWART</p> <p>2 MS. FARKAS: So I just want</p> <p>3 to request on the record. We made</p> <p>4 some references to how much time</p> <p>5 he's put in for certain things in</p> <p>6 his invoice, and so we'd like to</p> <p>7 request on the record copies of</p> <p>8 invoices that he's issued to you.</p> <p>9 MR. FRANK: Sure.</p> <p>10 Q What we would like to do is</p> <p>11 I'm going to play you -- I believe we</p> <p>12 have nine recordings, and I simply want</p> <p>13 to know if you recognize them.</p> <p>14 A Okay.</p> <p>15 Nothing more than if I've</p> <p>16 heard them before?</p> <p>17 Q And if you can identify them,</p> <p>18 correct.</p> <p>19 A Um-hum.</p> <p>20 Q And we'll play it -- you can</p> <p>21 put your hand up if you've got it.</p> <p>22 There's not -- it's not a test for how</p> <p>23 long it takes you. Just asking.</p> <p>24 A I can name that tune in one</p> <p>25 note.</p>
<p style="text-align: right;">Page 279</p> <p>1 STEWART</p> <p>2 would be not enough to constitute a</p> <p>3 strong case, yes.</p> <p>4 Q You also identify at some</p> <p>5 point the concept -- in Example 5 you</p> <p>6 identify certain notes that employ the</p> <p>7 repeated notes on a descending scale.</p> <p>8 Is the concept of repeating</p> <p>9 notes on a descending scale original to</p> <p>10 Let's Get It On?</p> <p>11 A No. Original in the sense of</p> <p>12 never having been done before, original</p> <p>13 in the sense of not a copy?</p> <p>14 Q The former.</p> <p>15 A No.</p> <p>16 MS. FARKAS: Let's take a</p> <p>17 five-minute break and I may be</p> <p>18 finished or very close to</p> <p>19 finished.</p> <p>20 VIDEOGRAPHER: The time is</p> <p>21 5:04 p.m. We're off the record.</p> <p>22 (Whereupon, a brief recess</p> <p>23 was taken.)</p> <p>24 VIDEOGRAPHER: The time is</p> <p>25 5:16 p.m. We're on the record.</p>	<p style="text-align: right;">Page 281</p> <p>1 STEWART</p> <p>2 Q Well, we'll see.</p> <p>3 MR. FRANK: Are they actual</p> <p>4 commercial recordings or are</p> <p>5 they --</p> <p>6 MS. FARKAS: They should</p> <p>7 be -- yes. My understanding is</p> <p>8 they're actually -- they're not,</p> <p>9 you know, me. They're actually</p> <p>10 commercially released recordings.</p> <p>11 MR. GOLDSMITH: And we'll</p> <p>12 identify each as Audio Exhibit 1,</p> <p>13 2 -- so this is Audio Exhibit 1.</p> <p>14 (Whereupon, the recording was played.)</p> <p>15 A Yes, I am very familiar with</p> <p>16 this song, it's Petula Clark.</p> <p>17 Q And what's the name of the</p> <p>18 song?</p> <p>19 A Downtown.</p> <p>20 Q You are one for one.</p> <p>21 A What's the prize?</p> <p>22 Q You get to leave.</p> <p>23 MR. GOLDSMITH: Exhibit 2.</p> <p>24 (Whereupon, the recording was played.)</p> <p>25 A Do you want to listen to the</p>